

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of September, two thousand six.

PRESENT:

HON. JON O. NEWMAN,
HON. JOSÉ A. CABRANES,
HON. RICHARD C. WESLEY,
Circuit Judges.

Qiu Fang Chen,

Petitioner,

v.

No. 05-2760-ag
NAC

Alberto R. Gonzales, Attorney General of the United States,
U.S. Department of Justice, Michael Chertoff, Assistant Secretary
of DHS, Michael Garcia, Assistant Secretary of Homeland Security
in Charge of the U.S.I.C.E., Edward McElroy, New York City
Interim Office Director, ICE,

Respondents.

FOR PETITIONER: Yee Ling Poon, Robert Duk-Hwan Kim, New York, New York.

FOR RESPONDENTS: Mary Beth Buchanan, United States Attorney, Margaret E.
Pickering, Assistant United States Attorney, Pittsburgh,
Pennsylvania.

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
3 petition for review is DENIED.

4 Qiu Fang Chen, a native and citizen of China, seeks review of a February 14, 2003 order
5 of the BIA denying her motion to reopen its December 9, 2002 order summarily affirming the
6 December 8, 2000 decision of immigration judge (“IJ”) Annette Elstein denying Qiu’s
7 applications for asylum, withholding of removal, and relief under the Convention Against
8 Torture. *In re Qiu Fang Chen*, No. A77 293 141 (B.I.A. Feb. 14, 2003), *denying* No. A77 293
9 141 (B.I.A. Dec. 9, 2002), *aff’g* No. A77 293 141 (Immig. Ct. N.Y. City December 8, 2000). We
10 assume the parties’ familiarity with the underlying facts and procedural history of the case.

11 This Court reviews the BIA’s denial of a motion to reopen for abuse of discretion. *See*
12 *Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Khouzam v. Ashcroft*, 361 F.3d 161,
13 165 (2d Cir. 2004). Chen argues that the BIA should have taken administrative notice of material
14 submitted in other factually similar cases. However, as Chen did not address the issue of
15 administrative notice in her motion before the BIA, and the Government specifically argues that
16 she failed to address the issue in a motion to reconsider the denial of her motion to reopen and
17 thus failed to properly exhaust it at the agency level, we decline to review such argument. *See Lin*
18 *Zhong v. U.S. Dep’t of Justice*, — F.3d —, 2006 WL 2260480 at *11 (2d Cir. Aug. 8, 2006).

19 In support of her motion to reopen, Chen submitted a personal affidavit, her marriage
20 certificate, and the birth certificates of her two children. *See* JA at 8–14. Chen failed to present
21 any country condition material indicating that she would likely be sterilized upon return to China
22 on account of her two United States-citizen children, and the BIA correctly noted that none of the

1 submitted evidence established Chen's *prima facie* eligibility for relief. Because Chen's fear of
2 future persecution based on illegal departure and the birth of two United States-citizen children is
3 totally unsubstantiated, the BIA did not abuse its discretion in denying the motion to reopen. *See*
4 *Jian Xing Huang v. INS*, 421 F.3d 125, 129 (2d Cir. 2005) (finding that, "[i]n the absence of
5 solid support in the record" for petitioner's assertion that he will be subjected to persecution on
6 account of his two U.S.-born children, "his fear is speculative at best").

7 For the foregoing reasons, the petition for review is DENIED. Having completed our
8 review, any stay of removal that the Court previously granted in this petition is VACATED, and
9 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
10 request for oral argument in this petition is DENIED in accordance with Federal Rule of
11 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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15 FOR THE COURT:
16 Roseann B. MacKechnie, Clerk
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By: _____